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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUA A. ADCOCK,

Defendant.

Case No. 2:12-CR-015-RCJ-(GWF)

United States' Motion To Amend Judgment

Background and Facts

COMES NOW the United States of America, by and through the United States Attorney for the District of Nevada, and moves this Court, pursuant to Rule 36, Fed. R. Crim. P., to amend the order of Judgment and Commitment that this court entered in the above-captioned case on June 26, 2012.

In this case, the defendant was indicted for manufacture of a controlled substance, in violation of 21 U.S.C. § 841(a)(1) and being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). On February 2, 2012, the defendant pled guilty to both counts of the information. At the defendant's sentencing hearing, on June 8, 2012, this Court signed a final order of forfeiture forfeiting several firearms to the United States of America. This Court also signed a standard "Judgment In A Criminal Case" form that

1 imposed various other penal sanctions on the defendant, including a 72-month term of
2 incarceration.

3 Typically, during the course of a sentencing hearing, Government counsel will
4 request, or the Court will declare, *sua sponte*, that the forfeiture order will be appended
5 to, and made a part of, the signed Judgment and Commitment. This practice is consistent
6 with the mandate of Rule 32.2 (b)(4)(B), Fed. R. Crim. P., which states that the Court
7 “must also include the forfeiture order, directly or by reference, in the judgment, but the
8 Court’s failure to do so may be corrected at any time under Rule 36.” While it was (and
9 is) the intent of the Government that this Court make the order of forfeiture a part of the
10 Judgment and Commitment, apparently no such statement of incorporation was made at
11 the sentencing by the Court or counsel.

12 The straightforward provisions of Rule 36, Fed. R. Crim. P., provide that: “After
13 giving any notice it considers appropriate, the court may at any time correct a clerical
14 error in a judgment, order or other part of the record, or correct an error in the record
15 arising from oversight or omission.” (emphasis added).¹

16 That it was this Court’s intent to impose a forfeiture sanction against the defendant
17 is apparent from its execution of the Order of Forfeiture. However, to give that
18 independent order the force and effect of a judgment, it should, as Rule 32.2 requires, be
19 incorporated by reference, as well as by physical attachment, to the Judgment and
20 Commitment form.

21 In addition, at the bottom of the “Schedule of Payments” page of the
22 Judgement and Commitment, we request that this Court check the box that denotes the
23 following language: “The defendant shall forfeit the defendant’s interest in the following
24 property to the United States:” Underneath that checked box we request that the
25

26 ¹Consistent with standard practice, the United States will serve defendant’s counsel with a
27 copy of this motion to satisfy the notice requirement embodied in Rule 36.

1 following language be included:

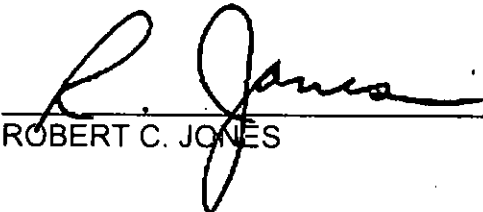
2 "See attached Order of Forfeiture"

3 Because Rule 36 gives this Court expansive authority to correct a clerical error or
4 oversight; because it was the intent of this Court and the Government that the firearms
5 described in the information, the plea agreement, the preliminary order of forfeiture and
6 the final order of forfeiture be forfeited to the United States; and because it will serve the
7 ends of justice to make a correction to the Judgment and Commitment, as described
8 above, that complies with the requirements of Rule 36, the United States requests that the
9 Judgment and Commitment be modified accordingly and that a copy of the Order of
10 Forfeiture be appended thereto..

11 WHEREFORE, the United States request, that its motion, in its entirety, be
12 granted.

13 ORDER

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15 IT IS SO ORDERED this 10th day of December, 2012.

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19 ROBERT C. JONES
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PROOF OF SERVICE

I, Michael A. Humphreys, AUSA, certify that the following individual was served with the UNITED STATES' MOTION TO AMEND JUDGMENT on this date by the below identified method of service:

Electronic Case Filing:

John J. Momot
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DATED this 18th day of July 2012.

/s/ Michael Humphreys
MICHAEL A. HUMPHREYS
Assistant United States Attorney